

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Arnold Berkowitz, M.D.

Case No. 800-2017-030005

**Physician's and Surgeon's
Certificate No. G 53757**

Respondent

DECISION

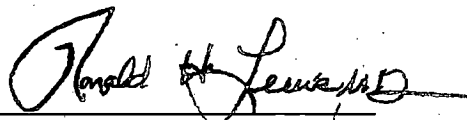
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 5, 2018.

IT IS SO ORDERED December 8, 2017.

MEDICAL BOARD OF CALIFORNIA

By: _____



**Ronald H. Lewis, M.D., Chair
Panel A**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARNOLD BERKOWITZ, M.D.,

Physician's and Surgeon's Certificate
No. G 53757

Respondent.

Case No. 800-2017-030005

OAH No. 2017070564

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on November 2, 2017, in Oakland, California.

Deputy Attorney General Carolynne Evans represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

Respondent Arnold Berkowitz, M.D., represented himself and appeared by telephone.

The record closed and the matter was submitted for decision on November 2, 2017.

FACTUAL FINDINGS

1. On October 9, 1984, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 53757 to Arnold Berkowitz, M.D. (respondent). The license is scheduled to expire on November 30, 2017.

2. On June 7, 2017, complainant Kimberly Kirchmeyer, acting in her official capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California license is subject to discipline because respondent was recently convicted of three felonies and two misdemeanors in Pennsylvania, and because discipline was imposed on respondent's medical license by the Pennsylvania State Board of Medicine (Pennsylvania Board).

Criminal Convictions

3. On December 16, 2016, respondent was charged with numerous felonies and misdemeanors in the Commonwealth of Pennsylvania Court of Common Pleas in the County of Bucks. On February 21, 2017, respondent pled guilty to: 1) delivering or possessing with the intent to deliver a controlled substance, a felony; 2) conspiracy to deliver or possess with the intent to deliver a controlled substance, a felony; 3) administering or dispensing a controlled substance outside of the scope of the physician-patient relationship or not consistent with the treatment principles accepted by the medical community, a felony; 4) unlawfully procuring a drug by fraud, deceit, misrepresentation or subterfuge, a misdemeanor; and 5) possessing the identifying information of another person without the consent of that person to further an unlawful purpose, a misdemeanor. On May 1, 2017, respondent was sentenced to between six and 23 months in home detention followed by 36 months of probation. One of the conditions of probation prohibited respondent from seeking reinstatement of his medical license during the supervision period.

The factual circumstances underlying the convictions involved a weight loss clinic owned by respondent called "Shape and Weight." Respondent left the clinic and his patients in the care of an unlicensed individual who wrote prescriptions, dispensed medication, saw ongoing patients, met with new patients and ran the clinic during respondent's extended absences. Respondent signed and backdated new patient documentation when he returned from out-of-state travel. In addition, respondent wrote prescriptions in the names of former patients without their knowledge and filled the prescriptions at Walmart. Respondent would later dispense the medication from the clinic. When a search warrant was executed at Shape and Weight, respondent surrendered over \$150,000 in currency stored in his car, and \$460,000 in U.S. Savings Bonds stored in the basement. Law enforcement officers also located cashier's checks in respondent's name totaling more than \$90,000 and documentation from an Australian bank account concerning accounts in respondent's name containing over \$1,900,000.

Action by Pennsylvania Board

4. On January 5, 2017, the Pennsylvania Board issued an immediate temporary suspension of respondent's license to practice medicine in that state based on the criminal allegations and a finding that respondent posed an immediate and clear danger to the public health and safety.

5. On May 31, 2017, the Pennsylvania Board issued an automatic suspension of respondent's medical license for a minimum of 10 years from the date of his convictions.

Respondent's Evidence

6. Respondent has been a physician for approximately 30 years. He attended medical school at the University of Pennsylvania and completed a residency in radiation oncology in 1987 at the University of California, Irvine.

7. Respondent reports that he has traveled extensively performing his work as a radiation oncologist. He resides in Pennsylvania, but would leave the state for months at a time working in different settings.

8. Respondent needed a practice to work in when he returned to Pennsylvania between out-of-state opportunities. He opened the Shape and Weight clinic as a balance to the stressful field of oncology. Respondent reports that he juggled the weight loss clinic with his oncology work in various states. For 18 years, a nurse by the name of Jeanette Reynolds worked in his clinic while he was away. He admits that he condoned the unauthorized practice of medicine by allowing her to dispense controlled substances. Respondent states that he was in daily telephone and email contact with Reynolds and only allowed her to hand out refills and did not permit her to see new patients.

9. After Reynolds passed away, respondent hired an unlicensed individual, Diane Grant, to take Reynolds's place. Grant was a former patient. Respondent states that he failed to conduct a background check on Grant and she went beyond his instructions by seeing new patients, seeing her own clients, prescribing opioids, and dealing drugs out of the clinic. Respondent admits that he signed and backdated the medical records of several new patients upon his return from a five-month stay in California in April 2016. These new patients were undercover officers.

10. Respondent also admits that he wrote prescriptions in the names of former patients, filled the prescriptions at Walmart and dispensed the medication to clinic patients. Respondent claims that he did so to save money for his patients. He did not consider his actions to constitute identity theft. Respondent considers the charges that were filed against him to have been overblown. He reports that he was required to forfeit \$1,000,000 to the government, which he described as "extortion."

11. Respondent feels that the Pennsylvania Board's actions were excessive, but he understands that there is a statute that requires a 10-year suspension as a result of his convictions.

12. Respondent would like to retain his California license; he considers it a waste of his talents to revoke his ability to practice.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in this matter is on the Board and the standard of proof is clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

First Cause for Discipline: Criminal Convictions

2. Business and Professions Code section 2234 authorizes the Board to impose discipline on a licensee who has committed unprofessional conduct. Business and Professions Code section 2236 provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct. Respondent's convictions are substantially related to the qualifications, functions and duties of a physician and surgeon.

Cause exists under Business and Professions Code sections 2234 and 2236 to take disciplinary action against respondent's license, by reason of the matters set forth in Factual Finding 3.

Second Cause for Discipline: Out-of-State Discipline

3. Business and Professions Code section 141, subdivision (a), provides that disciplinary action by another state for any act substantially related to the practice regulated by the California license may be ground for disciplinary action. The discipline imposed by the Pennsylvania Board was for acts that are substantially related to the practice of medicine. Cause for discipline exists pursuant to Business and Professions Code section 141, subdivision (a), by reason of the matters set forth in Factual Findings 3 through 5.

4. Business and Professions Code section 2305 provides that the suspension imposed by another state on a license to practice medicine, for conduct that would have been grounds for discipline in California, constitutes grounds for discipline for unprofessional conduct. Respondent's misconduct and convictions constitute grounds for discipline in California. Cause therefore exists under Business and Professions Code section 2305 to take disciplinary action against respondent's license, by reason of the matters set forth in Factual Findings 3 through 5.

Disciplinary Considerations

5. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board has adopted guidelines to assist in the evaluation of that issue. (Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition.) The guidelines provide that in out-of-state discipline cases the minimum level of discipline should be the same as that for a similar violation in California; the maximum is revocation. The minimum recommended level of discipline for a conviction that arises from, or during, patient care is stayed revocation and seven years' probation, including a 30-day suspension.

It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his criminal conduct, so that it would not be contrary to the public interest to allow him to continue to practice medicine in California.

Respondent's convictions and his Pennsylvania Board discipline are recent, and his misconduct arose directly from patient care. Moreover, the misconduct was extremely serious, was ongoing and involved fraud. Respondent presented no evidence of rehabilitation. Under these circumstances, revocation of respondent's license is necessary to protect the public.

ORDER

Physician's and Surgeon's Certificate No. G 53757, issued to respondent Arnold Berkowitz, M.D., is revoked.

DATED: November 9, 2017

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2017-030005

**Arnold Berkowitz, M.D.
39602 Ramshorn Drive
Murrieta, CA 92563-5561**

A C C U S A T I O N

**Physician's and Surgeon's Certificate
No. G 53757**

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 9, 1984, the Medical Board issued Physician's and Surgeon's Certificate Number G 53757 to Arnold Berkowitz, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2017 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides, in part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code provides that the Board shall take action against a licensee who is charged with unprofessional conduct.

6. Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

7. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a

1 disciplinary action taken against the licensee by another state, an agency of the federal
2 government, or another country."

3 8. Section 2236 of the Code provides that the conviction of any offense
4 substantially related to the qualifications, functions or duties of a physician and surgeon
5 constitutes unprofessional conduct.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Criminal Convictions)

8 9. On or about December 16, 2016, Respondent was criminally charged with
9 numerous counts of possessing a controlled substance with the intent to unlawfully deliver and
10 conspiracy to possess a controlled substance with the intent to unlawfully deliver, both felonies,
11 in the Commonwealth Court of Pennsylvania. The charges in the *Commonwealth of*
12 *Pennsylvania v. Arnold Berkowitz* (Docket No. MJ-07112-CR-0001690-2016) alleged that
13 Respondent operated a clinic called Shape and Weight and would routinely write prescriptions for
14 controlled substances in the names of unwitting patients, have the prescriptions filled, and would
15 then bring the medications back to his clinic to be dispensed to other patients. The charges also
16 alleged that Respondent allowed an unlicensed employee to dispense controlled substances to
17 patients while he was not present. On or about May 1, 2017, Respondent was convicted,
18 pursuant to a guilty plea, of felony possession with intent to unlawfully deliver a controlled
19 substance and felony conspiracy to possess a controlled substance with the intent to unlawfully
20 deliver the controlled substance. Respondent was sentenced to a term of imprisonment not less
21 than six months nor more than twenty-three months and thirty-six months probation.

22 10. Respondent's criminal convictions constitute unprofessional conduct and the
23 conviction of crimes substantially related to the qualifications, functions or duties of a physician
24 and surgeon, and are cause for discipline pursuant to Business and Professions Code sections
25 2234 and/or 2236.

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EXHIBIT A



Commonwealth of Pennsylvania
Department of State
Bureau of Professional and Occupational Affairs
STATE BOARD OF MEDICINE
P.O. BOX 2649
HARRISBURG, PA 17105-2649

Telephone: 717-783-1400
717-787-2381

Fax: 717-787-7769
www.dos.state.pa.us

February 16, 2017

TO WHOM IT MAY CONCERN:

RE: ARNOLD BERKOWITZ, M.D.
DOB: [REDACTED]
SS#: [REDACTED]

As custodian of the records of the State Board of Medicine, I certify that the enclosed document is a copy of action taken by the Board issued in the matter of ARNOLD BERKOWITZ, M.D. and is a true and correct copy of the original on file in the Board office.

Sincerely,

Suzanne Zerbe

Suzanne Zerbe, Administrator
Chief, Physician/Podiatrist Unit

(SEAL)

COMMONWEALTH OF PENNSYLVANIA PROthonotary
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE 2017 JAN -5 AM 9:118

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Arnold Berkowitz, M.D.
Respondent

Department of State

File No.: 16-49-14616

Docket No: 0023 -49-17

ORDER OF TEMPORARY SUSPENSION AND NOTICE OF HEARING

AND NOW, this 5th day of January 2017, upon review of the Petition for Temporary Suspension of the license to practice as a medical physician and surgeon held by Arnold Berkowitz, M.D. (*hereinafter* "Respondent"), license number MD024466E, filed by the Prosecuting Attorney for the Commonwealth of Pennsylvania, the State Board of Medicine (*hereinafter* "Board") makes the following findings and enters the following Order:

SUSPENSION ORDER

The Board finds the Prosecuting Attorney has alleged facts in the Petition, which, if taken as true, establish at each and every count that the Respondent's continued practice as a medical physician and surgeon within the Commonwealth of Pennsylvania, along with the exercise of any other licenses, registrations, certificates, approvals, authorizations, or permits (*hereinafter referred to collectively as* "authorizations to practice the profession") issued by the Board, makes Respondent an immediate and clear danger to the public health and safety. Therefore in accordance with Section 40(a) of the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), 63 P.S. § 422.40(a), the Board **ORDERS** that the license to practice as a medical physician and surgeon issued to the Respondent, license number MD024466E, along with any

other authorizations to practice the profession issued by the Board to Respondent, are **TEMPORARILY SUSPENDED** upon the service of this Order. Respondent shall surrender his wall certificate(s), biennial renewal certificate(s) and wallet card(s) (or notarized affidavit of their loss or destruction) to representatives of the Bureau of Enforcement and Investigation or the Bureau of Professional and Occupational Affairs, immediately upon service of this Order in accordance with Section 44 of the Act, 63 P.S. § 422.44.

PRELIMINARY HEARING

A preliminary hearing shall be scheduled and conducted by the Board or Office of Hearing Examiners to be convened within thirty (30) days from the date of issuance of this Order. The preliminary hearing shall be limited to evidence on the issue of whether there is a *prima facie* case to support the temporary suspension of the Respondent's license and other authorizations to practice the profession issued by the Board. The preliminary hearing will be held at a location designated by the Board or a hearing examiner for the Board.

The Respondent is entitled to be present at the preliminary hearing and may be represented by an attorney, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings.

If the Board or hearing examiner finds a *prima facie* case is not established, Respondent's license and other authorizations to practice the profession issued by the Board will be immediately restored. If a *prima facie* case is established, the temporary suspension shall remain in effect until vacated by the Board, but in no event longer than 180 days, unless otherwise ordered or agreed to by the participants.

ADDITIONAL FORMAL ACTION

In addition to this temporary suspension proceeding, the prosecuting attorney will commence a separate action to suspend, revoke or otherwise restrict Respondent's license and other authorizations to practice the profession issued by the Board through the filing of a charging document, an Order to Show Cause. The Order to Show Cause may include, but not be limited to, the facts which were alleged in the Petition for Immediate Temporary Suspension. Any Order to Show Cause filed by the prosecuting attorney will be served upon the Respondent and the Order will direct Respondent to reply to the charges in a written answer within twenty (20) days of the issuance of the Order to Show Cause. A formal hearing on that Order to Show Cause will then be scheduled and conducted by the Board or the Hearing Examiner for the Board.

PROCEDURES

Continuances will be granted for good cause only. A request for a continuance must be filed with the Prothonotary, in writing, at least one (1) week prior to the date of the hearing. The requirement of the one (1) week advance filing of a request for continuance will be waived only upon a showing of good cause. The failure to have an attorney present and a request for continuance to retain an attorney will not be considered a valid reason for the granting of a continuance on the day of the hearing. **A request by the Respondent for an extension of time or a continuance which will delay the preliminary hearing or the formal hearing must be accompanied by the agreement of the Respondent that the 180-day temporary suspension will continue during whatever additional time is necessary to conclude the proceedings.**

All proceedings are conducted in accordance with the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704; 63 P.S. §§ 2201-2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251. A record of the hearing will be

stenographically prepared by an official reporting service. A copy of the transcript may be secured by personally making arrangements with the reporting service at the time of the hearing.

Any document submitted in this matter must be filed with:

Prothonotary
Department of State
2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105
717-772-2686

Also, you must send a separate copy of any documents submitted in this matter to the prosecuting attorney named below at:

Amanda N. Wojciechowski
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P.O. Box 69521
Harrisburg, PA 17106-9521

BY ORDER:
BEFORE THE STATE BOARD OF
MEDICINE PROBABLE CAUSE
SCREENING PANEL

Bruce A. Brod,
M.D.
Committee Member

[Signature]
APPROVE Immediate Temporary
Suspension of Arnold Berkowitz

DENY Immediate Temporary
Suspension of Arnold Berkowitz

RECUSE FROM DECISION

Keith E. Loiselte
Committee Member

APPROVE Immediate Temporary
Suspension of Arnold Berkowitz

DENY Immediate Temporary
Suspension of Arnold Berkowitz

RECUSE FROM DECISION

Charles A. Castle,
M.D.
Committee Member

APPROVE Immediate Temporary
Suspension of Arnold Berkowitz

DENY Immediate Temporary
Suspension of Arnold Berkowitz

RECUSE FROM DECISION

Board Counsel:

Peter D. Kovach or Wesley J. Rish

For the Commonwealth:

Amanda N. Wojciechowski
Prosecuting Attorney
Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs
P.O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Arnold Berkowitz, M.D.
668 Parlin Street
Suite B
Philadelphia, PA 19116-3624

File No.:

16-49-14616

Date of Issuance:

January 5, 2017

**BY ORDER:
BEFORE THE STATE BOARD OF
MEDICINE PROBABLE CAUSE
SCREENING PANEL**

**Bruce A. Brod,
M.D.**
Committee Member

*APPROVE Immediate Temporary
Suspension of Arnold Berkowitz*

*DENY Immediate Temporary
Suspension of Arnold Berkowitz*

RECUSE FROM DECISION

**Keith E. Loiselie
Committee Member**

*APPROVE Immediate Temporary
Suspension of Arnold Berkowitz*

*DENY Immediate Temporary
Suspension of Arnold Berkowitz*

RECUSE FROM DECISION

**Charles A. Castle,
M.D.**
Committee Member

*APPROVE Immediate Temporary
Suspension of Arnold Berkowitz*

*DENY Immediate Temporary
Suspension of Arnold Berkowitz*

RECUSE FROM DECISION

Board Counsel:

Peter D. Kovach or Wesley J. Rish

For the Commonwealth:

Amanda N. Wojciechowski
Prosecuting Attorney
Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs
P.O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Arnold Berkowitz, M.D.
668 Parlin Street
Suite B
Philadelphia, PA 19116-3624

File No.:

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January 5, 2017